

**APPROVED MINUTES
SUNNYVALE CITY COUNCIL MEETING
TUESDAY, JANUARY 29, 2008**

5 P.M. SPECIAL COUNCIL MEETING (Closed Session) - Conference with Legal Counsel – Anticipated Litigation. Initiation of litigation pursuant to subdivision (c) of Section 54956.9: 2 potential cases, and conference with Labor Negotiators pursuant to Government Code 54987.6. Negotiator: Erwin Young, Director of Human Resources. Employee Organizations: Sunnyvale Employees Association (SEA), Service Employees International Union (SEIU) Local 715 (part-time employees), and Sunnyvale Management Association (Management employees).

7 P.M. REGULAR MEETING

SALUTE TO THE FLAG

Mayor Spitaleri led the salute to the flag.

ROLL CALL

PRESENT:

Mayor Anthony Spitaleri
Vice Mayor Melinda Hamilton
Councilmember John Howe
Councilmember Ron Swegles
Councilmember Christopher Moylan
Councilmember David Whittum

ABSENT:

Councilmember Otto Lee

STAFF PRESENT:

City Manager Amy Chan
Assistant City Manager Robert Walker
City Attorney David Kahn
Director of Community Development Hanson Hom
City Clerk Gail Borkowski

PUBLIC ANNOUNCEMENTS

Councilmember Howe announced that the Recycling and Solid Waste Commission of Santa Clara County will hold a Green Business Conference in Palo Alto on March 21, 2008.

Vice Mayor Hamilton stated she visited St. Martin's Elementary School for Community Day.

Vice Mayor Hamilton recognized long-time resident Genevieve Corboline who recently passed away. Ms. Corboline's brother served as Mayor of Sunnyvale and as a Councilmember in the 1940's.

Councilmember Swegles announced the Sunnyvale Parks of the Future web site has a new site at www.parksofthefuture.com. Councilmember Swegles stated residents have an opportunity to share their thoughts on parks of the future in Sunnyvale by going to this web site and completing the parks survey.

CLOSED SESSION REPORT FOR DECEMBER 11, 2007

Conference with Legal Counsel – Anticipated Litigation. Initiation of litigation pursuant to subdivision (c) of Section 54956.9: (2) potential cases.

Vice Mayor Hamilton reported that one case was discussed and direction was given, but no action was taken. Vice Mayor Hamilton stated the remaining case will be discussed at a later date.

Conference with Labor Negotiators pursuant to Government Code 54987.6: Negotiator: Erwin Young, Director of Human Resources. Employee Organizations: Sunnyvale Employees Association (SEA), Service Employees International Union (SEIU) Local 715 (part-time employees), and Sunnyvale Management Association (Management employees).

Vice Mayor Hamilton reported direction was given, but no action was taken.

Councilmember Lee arrived at 7:05 p.m. and roll call was taken again.

ROLL CALL

PRESENT:

Mayor Anthony Spitaleri
Vice Mayor Melinda Hamilton
Councilmember John Howe
Councilmember Otto Lee
Councilmember Ron Swegles
Councilmember Christopher Moylan
Councilmember David Whittum

ABSENT:

None.

STAFF PRESENT:

City Manager Amy Chan
Assistant City Manager Robert Walker
City Attorney David Kahn
Director of Finance Mary Bradley
Director of Community Development Hanson Hom
Planning Officer Trudi Ryan
Senior Management Analyst Pete Gonda
City Clerk Gail Borkowski

Approved by Council on February 26, 2008

CONSENT CALENDAR

Vice Mayor Hamilton moved and Councilmember Howe seconded to approve the consent calendar.

VOTE: 7-0

- 1.A. Approval of Revised Draft Minutes of January 8, 2008**
- 1.B. Approval of Draft Minutes of January 15, 2008**
- 1.C. Approval of Information/Action Items – Council Directions to Staff**

Fiscal Items

- 1.D. RTC 08–023 List of Claims and Bills Approved for Payment by the City Manager – Lists No. 384 & 385**

Staff Recommendation: Council reviews the attached list of bills.

- 1.E. RTC 08–018 City of Sunnyvale Investment Report 4th Quarter 2007**

Staff Recommendation: Council receives and files the investment report.

- 1.F. RTC 08–028 Continuation of Supplemental Law Enforcement Funding and Budget Modification No. 30**

Staff Recommendation: Council appropriates the full amount available from Supplemental Law Enforcement Services into the City's Supplemental Law Enforcement Sub-Fund to fully fund one Patrol Team Captain.

Contract Items

- 1.G. RTC 08–031 Authorization to Modify an Existing Contract to Install and Maintain Home Access Equipment for Disabled Individuals through the Home Access Program (F0712-57)**

Staff Recommendation: Council modifies an existing contract with Access Options Incorporated in substantially the same form as the attached draft Service Agreement Amendment which increases the total contract amount from \$70,000 to \$145,000 and extends the contract by seven months through June 20, 2008.

- 1.H. RTC 08–017 Award of Contract to Provide Music Appreciation Instruction for the City's Recreation Program (F0701-61)**

Staff Recommendation:

- Council awards a two-year contract to Music For Families Incorporated, in

Approved by Council on February 26, 2008

substantially the same form as the attached draft and in an amount not to exceed \$75,000 per year, to provide music instruction for the City's Recreation Program, and

- Council delegates authority to the City Manager to exercise an option to extend the contract for one additional year, provided that pricing and service remain acceptable to the City.

1.I. RTC 08-032 Award of Contracts for Operational Efficiency and Optimum Staffing Studies for the Department of Finance and the Department of Parks and Recreation Facilities Services Division (F0708-25 and F0708-26) and Approval of Budget Modification No. 29

Staff Recommendation:

- Council awards a contract to Matrix Consulting Group, in substantially the same form as the attached draft and in an amount not to exceed \$80,000, to conduct an operational efficiency and optimum staffing study of the Department of Finance;
- Council awards a contract to Management Partners Incorporated, in substantially the same form as the attached draft and in an amount not to exceed \$43,900, to conduct an operational efficiency and optimum staffing study of the Department of Parks and Recreation Facility Services Division, and
- Council approves Budget Modification No. 29 which reduces \$76,100 from Project 826650 and \$40,000 from Project 826660 and appropriates \$116,100 into a new special project to be used for future efficiency and staffing studies.

1.J. RTC 08-025 Award of Bid No. F0711-51 for Replacement/Rehabilitation of Sewer Pipes Along a Portion of Olive Avenue

Staff Recommendation:

- Council awards a contract, in substantially the same form as the attached draft and in an amount of \$74,000, to K.J. Woods Construction Incorporated, for replacement/rehabilitation of sewer pipes along a portion of Olive Avenue, and
- Council approves a project contingency in the amount of \$11,100.

1.K. RTC 08-024 Award of Contract for Handheld Traffic Citation Writers with Associated Software (F0712-59)

Staff Recommendation: Council awards a contract to Berendo Solutions Incorporated, in substantially the same form as the attached purchase order and in an amount not to exceed \$62,443, for six handheld traffic citation writers and associated software, one year of technical support, shipping and sales tax.

Other Items

1.L. RTC 08-014 Issuance of Subpoena for FBI Evidence Related to Termination of Former Public Safety Officer Randall Gilbert

Staff Recommendation: Council issues the subpoena.

1.M. RTC 08-019 Ratification of City Council Intergovernmental Assignments Made by Outside Agencies

Staff Recommendation: Council ratifies intergovernmental Council assignments appointed by outside agencies.

STAFF RESPONSES TO PRIOR PUBLIC COMMENTS

None.

PUBLIC COMMENTS

Dan Hafemon stated concern over the Mary Avenue extension. He explained that the Environmental Impact Report (EIR) states that traffic on Mary Avenue will increase by more than one-third by the year 2020. Hafemon stated commute traffic already uses Mary Avenue and if traffic were to increase it would be a disaster. Hafemon stated he submitted a proposal to the City which reconfigures Mary Avenue and would allow bike lanes and discourage intercity traffic from using the street.

Councilmember Whittum clarified with Hafemon that his proposal reconfigures Mary Ave into a three-lane road (as it is north of Fremont) down to Evelyn with a middle turn-lane and bicycle lanes on both sides of the road.

Yong Ja Walterskirchen stated that in September 2007 she requested the developer build a sound wall between her property and the new home project. Walterskirchen stated she is still waiting to receive approval that a sound wall will be built. Walterskirchen explained she is recuperating from brain surgery and is very sensitive to noise and dust. Walterskirchen submitted three letters from her doctors who are also requesting that a sound proof wall be installed.

PUBLIC HEARINGS/GENERAL BUSINESS

2. RTC 08-030 2007-1048 – Fairorchard Architectural Committee Applicant] Callahan William C and Gretchen Trustee [Owner]: Application for 54 parcels in Tract 1910 located between Helena Drive, Homestead Road, Wright Avenue and Cupertino Middle School in an R-1 (Low-Density Residential/Single Story) Zoning District. Application to allow permanent status for a Single-Story Combining District

Councilmember Moylan stated he will recuse himself from this item as he lives within 500 feet of this project.

Councilmember Moylan left the dais.

Planning Officer Trudi Ryan presented the staff report.

Public hearing opened 7:18 p.m.

William Callahan, applicant, urged Council to uphold the Planning Commission's unanimous decision.

Wilma Anderson, applicant, stated this project has reached a point where it should be finalized.

Margaret Klugherz stated she is in favor of permanent status for a single-story combining district.

Glenn Hendricks stated he does not live in the subject area, but he is in favor of this zoning change and thanked the residents for their efforts.

A member of the public thanked Callahan and her neighbors who have helped over the years in supporting this zoning change.

Public hearing closed at 7:24 p.m.

Councilmember Howe inquired if the existing two-story homes in the combining district will become existing non-conforming. Planning Officer Ryan stated the existing two-story homes are currently legal non-conforming and will retain their status should the permanent single-story combining district receive approval.

Councilmember Howe verified with Planning Officer Ryan that the Sunnyvale Zoning Code provides that any residential use destroyed by accident (does not include homes torn down on purpose), may be rebuilt to its previous standard; however, the home may not be any larger than it was previously.

MOTION: Vice Mayor Hamilton moved and Councilmember Swegles seconded to approve Alternative 1: Council approves the rezoning to apply the single-story combining district as proposed by the applicant and recommended by the Planning Commission.

Councilmembers Lee and Swegles and Vice Mayor Hamilton spoke in favor of the zoning change.

VOTE: 6-0 (Councilmember Moylan recused)

City Clerk Gail Borkowski read the title of the ordinance into the record.

3. **RTC 08-035 2007-1106 Nathan Merlin [Applicant] Two Corners LLC [Owner]: Application for related proposals located at 1202-1205 Cortez Drive and 189-191 South Bernardo Avenue in an R-3 (Medium-Density Residential) Zoning District. (Negative Declaration);**
- **Rezone from R-3 (Medium-Density Residential) to R-3/PD (Medium-Density Residential/Planned Development) Zoning District,**
 - **Special Development Permit to allow the construction of eight townhouses,**
 - **Tentative Map to subdivide two lots into eight lots and one common lot, and**
 - **Variance from Sunnyvale Municipal Code Section 19.38.030 to allow individual solid waste and recycling carts instead of a centralized waste enclosure.**

Councilmember Moylan returned to the dais.

Mayor Spitaleri asked City Attorney David Kahn if Agenda Items 3 and 4 could be combined into one item. City Attorney Kahn stated Council could combine these items; however, the record would be cleaner if the two items were handled separately. Mayor Spitaleri accepted City Attorney Kahn's recommendation and stated that the two agenda items will be handled separately.

Planning Officer Ryan presented the staff report for Items 3 and 4 combined.

Councilmember Whittum confirmed with Planning Officer Ryan that if the footprint of the buildings were reduced, it would be possible to meet the open space requirement.

Councilmember Moylan asked staff to share their response to his email question about the neighboring project which has individual garbage cans. Planning Officer Ryan explained that during the public hearing at the Planning Commission, statements were made about other projects in the vicinity that were not required to have centralized trash enclosures. Planning Officer Ryan stated there is a project on Bernardo that was approved without the requirement for a centralized trash enclosure and the six units have individual carts. Planning Officer Ryan stated that through consultation with the city attorney, it was determined that requests for individual trash cans is an exception to the zoning requirements and should be handled as a variance (not as one of the deviations or exceptions that can be granted through a special development permit).

Councilmember Whittum inquired if the plan is approved without the trash enclosure; it appears there would be approximately 24 garbage cans out on trash pick up day. Planning Officer Ryan stated there could be up to 24 cans out but not all cans will be out at the same time. A single family home would have three cans (one for trash, recycling, and one for yard waste).

Councilmember Whittum confirmed with Planning Officer Ryan that the applicant would prefer not to have a trash enclosure. Councilmember Whittum confirmed with Planning Officer Ryan that there is room at the back of the project for a trash enclosure.

Public hearing opened at 7:37 p.m.

Nathan Merlin, applicant, stated the two projects being discussed (Item 3 and 4) are mirror images of each other. Merlin stated the point of contention is whether a trash enclosure is appropriate for the site. Merlin explained that the Planning Commission was split on the issue. Merlin stated a trash enclosure variance is appropriate for this project and identified that there is plenty of curb space for the trash cans. Merlin stated the maximum number of trash cans that would be left out on trash day would be closer to 16 cans. Merlin stated they agree that a centralized trash enclosure would fit at the rear of the property although their preferable option would be to receive a variance for a trash enclosure.

Councilmember Moylan inquired if the variance was approved, then would the area in the back of the project become open space and Merlin stated it would not be useable open space, but it would contribute to the feeling of open space and enhance landscaping requirements.

Councilmember Moylan confirmed with Merlin that the garages were designed to be oversized in order to accommodate individual trash cans.

Councilmember Howe confirmed with Merlin that the units in both projects will be sold to individual owners. Councilmember Howe confirmed with staff that all utilities for these projects are individually metered including water.

Vice Mayor Hamilton confirmed with Merlin that if a trash enclosure was required, he would prefer to have the trash enclosure located at the back of the property. Merlin explained that they would accept a trash enclosure with seven individual roll out bins which would be rolled out every trash day to the curb at the front of the property. Merlin stated due to the slope of driveway and the pavers, rubbish trucks would not be able to drive in and pick up a large bin.

Councilmember Whittum inquired why Merlin did not make the footprints of the individual units smaller which would have negated the need to request deviations for aspects of the project. Additionally, smaller units would allow more room for a trash enclosure and the project would not require a variance. Merlin explained that the design of the project presented several challenges due to the corner lot location. Merlin stated a 20 foot set back is required from the front of the property which may not be counted as useable open space. Merlin explained the project has two front yard set backs which causes a shortage of open space. Merlin stated the area has two deviations: front yard set back, and useable open space. Merlin added that the area that cannot be counted as open space is counted in

the landscaping requirement which is over by 60 percent.

Arthur Schwartz stated he supports the Planning Commission's recommendation for a centralized trash area. Schwartz identified that even though the garages were built as oversized, residents will fill them and trash cans will be left outside.

Public hearing closed at 7:50 p.m.

Vice Mayor Hamilton confirmed staff supports that the four guest parking spaces are adequate for this project as each unit will have two and a half parking spaces. Vice Mayor Hamilton confirmed with Planning Officer Ryan that the Planning Commission recommended having at least two of the four open parking spaces designated as guest parking. Planning Officer Ryan stated since the project is on a corner, there will be more street parking available in comparison to a mid-block complex.

MOTION: Councilmember Swegles moved and Councilmember Moylan seconded to approve Alternative 3: Council adopts the Negative Declaration and introduces an ordinance to rezone 1202-1204 South Bernardo Avenue and 189-191 South Bernardo Avenue from R-3 to R-3/PD and approve the Special Development Permit, Tentative Map for eight units and one common lot and approve the variance for individual trash and recycling carts, with attached conditions (except C.O.A. #15A).

City Clerk Borkowski read the title of the ordinance into the record.

Councilmember Swegles noted that Alternative 3 in the staff report identifies the rezone as 1202-1204 Bernardo Avenue and the ordinance that the city clerk read identified the area as 1202-1204 Cortez Drive. Planning Officer Ryan stated the staff report had an error and that 1202-1204 Cortez was correct.

Restated MOTION: Councilmember Swegles moved and Councilmember Moylan seconded to approve Alternative 3: Council adopts the Negative Declaration and introduces an ordinance to rezone 1202-1204 Cortez Drive and 189-191 South Bernardo Avenue from R-3 to R-3/PD and approve the Special Development Permit, Tentative Map for eight units and one common lot and approve the variance for individual trash and recycling carts, with attached conditions (except C.O.A. #15A).

Councilmember Howe explained that staff found that findings two and three were met but staff was not able to identify finding one. Planning Officer Ryan stated if Council is able to make finding one, Council could then take action on the variance.

Councilmember Swegles stated he finds that finding one is met because with centralized garbage, it is hard to sell a unit which is located near the central garbage.

Councilmember Moylan stated finding one requires that Council find something unusual about the property that makes it a hardship to enforce the zoning code. Councilmember Moylan stated the corner lot situation creates a large amount of space that cannot be counted as open space, which is an aspect of finding one. Councilmember Moylan stated the presence of another project nearby, which allows individual garbage cans, creates a hardship to the current project with respect to enforcing the zoning code. The project nearby has a special privilege that would not be afforded to this project. Councilmember Moylan stated Council can make the finding (finding one can be met). Councilmember Moylan stated he would also like to point out that the Planning Commission was split on this decision.

Councilmember Moylan stated the balance between what is best for the resident and what is best for the trash hauler needs some rebalancing.

Mayor Spitaleri confirmed with City Attorney Kahn that a vote and motion do not need to occur on the finding that Council made for finding one.

Council makes the finding for the variance that because of exceptional or extraordinary circumstances or conditions applicable to the property, or use, including size, shape, topography, location or surroundings, the strict application of the ordinance is found to deprive the property owner of privileges enjoyed by other properties in the vicinity and within the same zoning district.

VOTE: 6-1 (Vice Mayor Hamilton dissented)

4. **RTC 08-036 2007-1107 – Timothy Proschold [Applicant] Two Corners LLC [Owner]: Application for related proposals located at 185 South Bernardo Avenue (at Cortez Dr.) in an R-3 (Medium-Density Residential) Zoning District. (Negative Declaration);**
- **Rezone from R-3 (Medium-Density Residential) to R-3/PD (Medium-Density Residential/Planned Development) Zoning District,**
 - **Special Development Permit to allow the construction of eight town homes,**
 - **Tentative Map to subdivide one lot into eight lots and one common lot, and**
 - **Variance from Sunnyvale Municipal Code Section 19.38.030 to allow individual solid waste and recycling carts instead of a centralized waste enclosure.**

Planning Officer Ryan stated she previously presented the staff report for this project during Item 3 and pointed out the difference between the two items. Planning Officer Ryan stated this is a mirror image of the project in Item 3.

Public hearing opened at 7:59 p.m.

Tim Proschold, applicant, stated he would like to move forward on his project and would like to receive Council's approval as was given on Item 3.

Public hearing closed at 7:59 p.m.

MOTION: Councilmember Swegles moved and Councilmember Moylan seconded to approve Alternative 3: Council adopts the Negative Declaration and introduces an ordinance to rezone 185 S. Bernardo Avenue from R-3 to R-3/PD and approve the special development permit, tentative map for eight units and one common lot and approve the variance for individual trash and recycling carts with attached conditions (except C.O.A. #15A).

Council makes the finding for the variance that because of exceptional or extraordinary circumstances or conditions applicable to the property, or use, including size, shape, topography, location or surroundings, the strict application of the ordinance is found to deprive the property owner of privileges enjoyed by other properties in the vicinity and within the same zoning district.

Councilmember Moylan confirmed with Councilmember Swegles that Council was able to make the findings. Councilmember Moylan stated it would be hard to make a contrary argument on this project after what was just approved for Item 3.

City Clerk Borkowski read the title of the ordinance into the record.

VOTE: 6-1 (Vice Mayor Hamilton dissented)

5. **RTC 08-034 2007-0065 – Applicant appeal of a decision of the Planning Commission to deny an application for a Design Review to allow a new two-story single family residence for a total of 3,448 square feet and 62.9% FAR (Floor Area Ratio) where 45% FAR may be allowed without Planning Commission review. The property is located at 688 Conway Road (near Hollenbeck Avenue) in an R-2 (low-medium density residential) zoning district. (APN: 202-06-017)**

Planning Officer Ryan stated that the applicant explained to staff that they wished to withdraw their application. On Monday, January 28, 2008, the applicant stated he no longer wished to withdraw his application. Planning Officer Ryan stated the applicant would like to bring his project forward to Council and not redesign it as he originally had planned to do.

Planning Officer Ryan stated in order for Council to consider this item, staff will have to re-notice this item. Staff will work with the city manager to reschedule this item to a suitable date.

Councilmember Swegles confirmed if the applicant does proceed on his appeal, this would be his last opportunity to attempt to receive approval on his project prior to filing a new application.

Council takes no action.

6. RTC 08–026 Board and Commission Policy Limiting Speech on Official City Positions and First Amendment Analysis; Discussion of City Attorney Memorandum of November 27, 2007

City Attorney Kahn presented the staff report.

Assistant City Manager Robert Walker clarified that the City has never attempted to restrict board or commission members from speaking on issues that do not pertain to their particular board or commission.

Assistant City Manager Walker explained that board and commission members are free to speak on items that appear on their agendas, but the time to do so is the night it appears on their agenda.

Assistant City Manager Walker stated the City discourages board and commission members from expressing any opinions or individual point of view or lobbying Council prior to the completion of the public hearing. Board and commission members are charged with maintaining an unbiased perspective prior to the public hearing and prior to hearing all sides of an issue. To express an opinion prior to hearing all sides can cast doubt on a board or commission member's ability to maintain a fair and impartial perspective.

Assistant City Manager Walker stated once a vote is taken and the full body of the board or commission has adopted an official position on a matter, all members are charged with supporting that decision regardless of their individual opinion. Assistant City Manager Walker explained that the reasoning behind only authorizing the chair of the board or commission to present their official position is that it is a way to ensure that board and commission meetings are run efficiently. However, the chair is not precluded from sharing the minority view of the members with the Council.

Assistant City Manager Walker stated it has been suggested that the current board and commission policy could create a problem for the City in recruiting applicants, but that has not proved to be the case. Assistant City Manager Walker explained that recently Council asked board and commission applicants during their interview if they had any concerns over the policy and not one applicant stated they had any issues with the policy.

Councilmember Whittum stated the staff report identifies that the board and commission policy is in conflict with municipal code 19.98.070 and asked the city

attorney to explain further. City Attorney Kahn stated the municipal code allows certain board or commissioners to file an appeal to the Council after the board or commission has made their decision which is inconsistent with Council policy. Should Council not change their current policy, City Attorney Kahn stated he recommends that the ordinance is amended to be consistent with the policy.

Councilmember Whittum asked City Attorney Kahn if he has reviewed the entire Council policy for consistency with the ordinance. Mayor Spitaleri stated that was not germane to the current discussion and he would like to stay on point.

Councilmember Whittum inquired if anyone had been disciplined as a result of this policy for availing themselves of ordinance 19.98.070. Mayor Spitaleri stated that he is again asking that Councilmember Whittum stay on point and that discipline of board and commission members is not the issue before Council this evening.

Councilmember Whittum inquired if the Brown Act provides for any public testimony at odds with the policy. Councilmember Whittum inquired if board and commission members are covered under the Brown Act and permitted to testify before Council despite the Council policy. City Attorney Kahn stated the policy is not inconsistent with the Brown Act.

Councilmember Whittum stated there are two types of matters, quasi-judicial and legislative and he questioned if in the course of discussion if these matters are confused. Councilmember Whittum asked City Attorney Kahn to explain the difference between quasi-judicial and legislative and how that relates to freedom of speech for a commissioner. Councilmember Whittum asked how this policy applies to legislative matters in the same way that it applies to quasi-judicial matters. City Attorney Kahn stated the two matters have different considerations. A quasi judicial hearing is when Council sits as a judge (usually for a land use item), and the reason not to have prior comments is because Councilmembers need to have the appearance of fairness which is a separate doctrine from what is being discussed. The current situation of placing reasonable limits on speech is balanced by the need of the organization to maintain efficiency and order. City Attorney Kahn restated that these are two separate things being discussed.

Councilmember Whittum inquired as to what is the City's source of authority to restrict people's freedom of speech. City Attorney Kahn stated the authority is the U.S. Supreme Court case of *Pickering versus Board of Education* along with the number of other cases that have interpreted and applied that case in the Ninth Circuit.

Councilmember Lee confirmed with City Attorney Kahn that Council could choose to loosen up the rules on speech if they so choose. City Attorney Kahn stated Council could make a finding to allow more speech and weigh that heavier than organizational efficiency.

Vice Mayor Hamilton inquired if board and commission members should be given more than three minutes to speak during public comments. Vice Mayor Hamilton noted nothing is included in the policy identifying the length of time the chair (or their designee) may speak during a public hearing. Assistant City Manager Walker confirmed that a board or commission chair is given the same amount of time to speak as any other member of the public; however, the mayor has the ability to grant more or less time at his discretion on an impromptu basis.

Public hearing opened at 8:20 p.m.

Jim Griffith, Chair of the Board of Library Trustees, stated the board unanimously opposes omitting board member communication with Council.

Jim Griffith, speaking on his own behalf, stated he understands the intent of the board and commission policy and agrees with it; however, the restrictions within it prevent Council from getting the best advice possible and discourage qualified residents from serving on a board or commission.

Griffith stated staff inaccurately considered the effects of this policy on recruitment by asking applicants if they had any concerns with the policy, when in fact people who dislike this policy, likely did not apply.

Griffith stated the staff report did not identify that one commissioner has resigned as a result of this policy and one member of the library board may possibly resign if this policy is not corrected. Griffith stated staff's assertion that this policy will not affect recruitment is incorrect.

Vice Mayor Hamilton inquired as to what modifications Griffith would recommend for the board and commission policy. Griffith stated any wording that states something is "prohibitive" should be changed to state "strongly discouraged" and the language should be more general. Griffith stated the policy is too strongly worded.

Micki Falk expressed her concerns with the board and commission policy and any attempts to stop people from talking. Falk stated there are occasions where the chair may not be as knowledgeable on a particular issue and it would be helpful for Council to hear from other board or commission members. Falk stated those who serve on boards and commission are concerned citizens of the City and they should be able to approach a councilmember whenever they feel it is appropriate.

Kevin Jackson, member of the Bicycle and Pedestrian Advisory Commission, stated he has previously expressed his concerns over this policy and the way it is being imposed. Jackson stated this policy creates serious negative consequences for the Council's decision making process. Jackson spoke about the value that board and commission members offer to Council. Jackson stated board and commission members study issues from the beginning and are the

most prepared to respond to last minute questions and yet they are the only people not allowed to participate in the public hearing. Jackson urged Council to restore board and commission members' ability to provide advice at the most critical time and trust that members will use their time wisely.

Councilmember Whittum asked what other details Jackson wanted to provide. Jackson stated the meeting minutes were taken weeks or months prior and are not able to address last minute questions. Also with new information, because Council rules state that the chair speaks first, usually at that point the new information has not been raised yet and once it is raised, the chair has already spoken. Jackson stated although staff is well qualified for their positions, they do not have the knowledge and expertise that the board and commission members do and that knowledge and experience can be extremely helpful with specific issues or new information that comes up during a hearing.

Vice Mayor Hamilton stated she does not see in the policy that board and commission members are not able to contact Council and inquired where that restriction is listed. Jackson stated this restriction was discussed during the chair training on July 25, 2007 and subsequently it was addressed in a memo that was passed out during the September 11, 2007 study session.

Glenn Hendricks, Personnel Board member, stated he is comfortable with the existing board and commission policy. Hendricks stated this is consistent practice with management teams in the business world. Hendricks stated he supports leaving the policy as it is currently written.

Arthur Schwartz stated that his objections over the policy include the fact that the board and commission members do not have the ability to speak on something that was voted on by the board or commission. Schwartz urged Council to carefully consider their decision on whether to allow board and commission members the ability to express their opinions at Council meetings.

Patrick Grant, speaking on his own behalf, stated the original Council policy is being tightly worded and implemented by staff. Grant stated these rules in the policy should be advisory guidelines. Grant stated he has talked with people in other cities and found that in Mountain View, Council directs the board or commission's agenda, not staff, which allows for greater communication between Council and the members. Grant stated the current policy is not working for board and commission members.

Patrick Meyering, speaking on his own behalf, stated that this proposal is the third action by the city manager to silence Sunnyvale residents. Meyering explained that the reason the board and commissions were first set up was to receive input from the residents. Meyering spoke about his concerns over past actions that occurred between the city manager and the Housing and Human Services Commission.

Jeanine Stanek, speaking on her own behalf, spoke about a recent situation in which a staff person represented the minority position of the commission because the chair had gone home. Stanek stated if she has a dissenting vote on an item, she wants to have the opportunity to explain to Council why she voted the way she did as it may be important.

Dave Simons, speaking on his own behalf, stated he heard in order to save money, detailed minutes will no longer be prepared. Simons stated if members are not able to speak, and the minutes are no longer detailed, then the policy that Council is considering would be inappropriate. Simons stated he disagrees with a policy that does not allow dissenting or supporting comments to be shared with Council from other members (with or without detailed minutes).

Werner Gans, speaking on his own behalf, stated he would rather error on the side of open government than to hide a problem that the public has a right to know about.

Harriet Rowe, speaking on her own behalf, stated after listening to the city attorney's analysis, she has no problem with the current board and commission policy except in the case when new information becomes available. Rowe questioned how a board or commission member should handle new information that comes forward during a meeting. Assistant City Manager Walker stated if Council feels new information warrants further investigation then the issue should be sent back to the board or commission and staff in order to review the new information and not to simply rely on a member that happens to be in the Council Chambers at the time. Rowe stated this is the first time she had heard that direction.

Public hearing closed at 8:59 p.m.

Councilmember Lee confirmed that the text "*only the chair or his/her appointee shall appear before the Council to speak on board or commission issues*" was added to the policy after Council's study session. Assistant City Manager Walker stated this text is new language but represents what staff believes has always been Council policy. Assistant City Manager Walker stated staff is simply trying to clarify the policy.

Councilmember Lee confirmed that under the attendance section, staff added the current "personal leave" absence to the policy. This new additional absence was brought forward to Council during a study session and approved as a separate action.

Councilmember Lee asked the city attorney if Council could make a change to the attendance policy this evening. City Attorney Kahn stated the specific issue before Council was the board and commission policy limiting speech on official city positions and additional items should be added to an agenda for a separate meeting. City Attorney Kahn stated Council should focus on the policy discussed

in the memorandum.

Assistant City Manager Walker added that the attendance policy was before Council at the recent study issues workshop; however, Council deferred this item to next calendar year.

Vice Mayor Hamilton questioned if the policy needed to be changed or if it was more the interpretation of the policy that needed to be clarified. Assistant City Manager Walker stated staff is attempting to make the policy as clear as possible and asked Council to supply clear direction in terms of intent and then staff will work with the language and will return with the policy for Council's approval.

Councilmember Whittum inquired if Council needs any special grounds under the Charter to remove a board or commission member or is specific language required within the policy in order to provide a reason to remove a member. Assistant City Manager Walker stated the Charter allows Council to remove a board or commission member but it is not specific as to the reasons why and the policy provides the specifics for that very reason. City Attorney Kahn explained that the Charter provides that Council has the authority to appoint and remove commissioners but does not get into the specifics. City Attorney Kahn explained that the more specific board and commission policies are an attempt to provide guidelines to board and commissioners in terms of what is acceptable behavior and what would be considered problem behavior that would lead to Council removing a board or commission member. City Attorney Kahn stated that Councilmember Whittum was ultimately correct in that the basic authority to remove a member falls under the City Charter.

Mayor Spitaleri confirmed with City Attorney Kahn that whether there is new information or even if there it not new information raised, Council may make a motion to return the matter back to the appropriate board or commission for review.

Mayor Spitaleri inquired if the current board and commission policy would restrict the minority group from appealing the majority's opinion or does the policy need to conform to the municipal code. City Attorney Kahn clarified that only the Planning Commission would have the ability to appeal a majority opinion. Should the board and commission policy remain as it is, an ordinance amendment would need to be brought back to Council. City Attorney Kahn stated that until the ordinance amendment is brought back to Council for approval, a member of the Planning Commission would continue to have the right to request an appeal as a minority member.

Mayor Spitaleri inquired if the ordinance change would add the appeal right to all boards and commissions. City Attorney Kahn stated that suggestion to add the right to appeal to other commissions has not been previously contemplated. City Attorney Kahn stated the ordinance amendment would actually remove the

appeal right from the Planning Commission so as to match the policy.

Councilmember Moylan stated he is ready to make a motion consisting of five policy statements. The statements are not intended to be the exact language and Councilmember Moylan stated he would count on the City Attorney's office to properly write up these statements should his motion pass. Councilmember Moylan did not choose either alternative from the staff report.

MOTION No. 1: Councilmember Moylan moved and Vice Mayor Hamilton seconded approval of the following policy statements:

- 1) Board and commission members may communicate privately with Councilmembers on any subject at any time without restriction like other citizens. In public they are expected to represent the official position of their board or commission.
- 2) Only the chair or the chair's designee may speak during the Council public hearing on any item that has been addressed by the board or commission and for which detailed minutes have been provided to the Council. The chair will represent the majority view of the board or commission but may report on any minority views as well. The mayor may allow the board or commission representative to respond to any new information that appears during the public hearing.
- 3) If detailed minutes are not available, any board or commission member may speak under the time limits to represent the majority view.
- 4) If the board or commission recommendation is different from that of the staff, the mayor may waive the time limit and/or allow the chair to appear again for rebuttal.
- 5) City ordinances shall be modified (if necessary) to be consistent with this policy.

Councilmember Lee offered a friendly amendment to remove from policy statement 3 the following text: "to represent the majority view".

Friendly amendment accepted.

Vice Mayor Hamilton stated she wished to clarify policy statement 3 with the amendment. Vice Mayor Hamilton explained that the policy now states that someone in the minority could offer their opinion to Council if detailed minutes are not available. Vice Mayor Hamilton cautioned that with that scenario, should the chair not attend the Council meeting, Council would not know whether the position being presented to them was the minority or majority opinion. Councilmember Moylan agreed with Vice Mayor Hamilton.

Councilmember Moylan explained that he wished to retract his acceptance of Councilmember Lee's friendly amendment and leave his motion the way it was originally stated.

Councilmember Moylan stated his biggest concern with the board and commission policy is the restriction on private communication.

Councilmember Moylan stated when the mayor calls on a member of the public to speak but that the person has already gone home due to the length of the Council meeting, then Council has failed in their ability to receive public input. Councilmember Moylan stated if all members of a particular board or commission were to speak on an item, the result would be a longer Council meeting, which in turn could cause a member of the public to go home prior to speaking. Councilmember Moylan explained this is one of the problems that Council was attempting to solve. The other issue Council attempted to address was a possible situation involving a board or commission member who argued the minority viewpoint strong enough to sway Council, yet angered the other members of their board or commission.

Councilmember Moylan stated Council does support giving board and commission members the opportunity to update Council on the issues, respond to new information, and refute staff comments. Minutes of a split vote on the Planning Commission are very useful as are differing opinions between the commission and staff. Councilmember Moylan stated having the chair (or their appointee) speak on behalf of the board or commission allows Council the ability to question the chair without delaying the meeting by allowing all members to speak.

Councilmember Moylan stated he agrees the ordinances need to be consistent with whatever is decided.

Councilmember Moylan stated he shares the previous speakers concern over Council relying on the detailed minutes to the extent that the time allotted to the board or commission chair is waived. A decision such as this would cause a problem because if detailed minutes were not produced in the future, then Council would not receive any information concerning the views of the board or commission. Councilmember Moylan stated he feels he has addressed this concern within the points included in his motion.

Vice Mayor Hamilton thanked staff for the work done on this policy.

Vice Mayor Hamilton asked Councilmember Moylan if his motion includes having the chair (or their designee) speak twice during the public hearing in that they would speak first and then return at the end to rebut things stated at the public hearing. If so, would that be subject to the three minute time limit or at the discretion of the mayor.

Councilmember Moylan stated in the case where the official position of the board or commission is different than staff, then the mayor would ask if the chair had any response to the comments made by staff. Councilmember Moylan stated he did not put a time limit on the chair's ability to speak, leaving that to the mayor's

discretion.

Councilmember Lee stated he wished to clarify that if detailed minutes are not available, would a board or commissioner member be able to speak only in support of their board or commission's majority opinion. Councilmember Moylan stated he could go either way but that to remove the section in the third bullet of his motion, then point one would need to be rewritten also.

Councilmember Lee stated that without detailed minutes, Council would not know what the minority opinion was and the rationale behind that opinion. Councilmember Moylan explained his motion includes the ability for the chair to share with Council what the minority opinion was and the rationale behind that opinion. Councilmember Lee stated the motion should state that the chair is "required" to report the minority opinion when detailed minutes are not included. Councilmember Moylan stated any Councilmember could ask the chair (or their designee) to explain the minority position and at that point they would be required to answer that question.

Mayor Spitaleri stated he is concerned over not having representation from both the minority and majority and he wants to ensure that if the minority speaks, the majority is able to counter their argument (especially if detailed minutes are not included). Councilmember Moylan stated his motion guarantees the majority opinion will be represented. Mayor Spitaleri questioned what would occur if the only representation that is present is the minority opinion. Councilmember Moylan stated the minority opinion would be out of luck because if the chair has not designated anyone to come down to speak on the majority opinion, then the minority opinion would not be heard.

City Manager Amy Chan reminded Council that staff will always be available to offer staff's perspective. City Manager Chan further explained that the City is looking at Webcasting for board and commission meetings. The Webcasting technology would significantly reduce the chance of not having the minutes ready.

Councilmember Whittum stated he opposes the motion as it is complicated and the real problem is simple in that one sentence should be taken out of the policy. Councilmember Whittum stated the sentence that should be removed from the policy is the sentence stating that "Only the chair or his/her appointee shall appear before the Council to speak on board or commission issues."

Councilmember Whittum stated freedom of speech should be respected. Councilmember Whittum stated Council has the freedom to dismiss board or commissioners but not the freedom to tell them what to say.

Councilmember Lee thanked staff for the report and research on this subject. Councilmember Lee stated the motion is overkill for the issues at hand and the one item he disagrees with most is policy statement that would allow only the

chair or their appointee to speak to Council.

Councilmember Swegles stated board and commissions should follow the same policy as Council.

City Manager Chan stated although Council already has the authority to return an item to the board or commission for further review when new information is received, Council may want to consider adding that point to the motion for clarification.

Vice Mayor Hamilton stated she would add that as another motion as the current motion is complicated enough.

Assistant City Manager Walker asked for clarification on Councilmember Moylan's motion. Assistant City Manager Walker asked whether Webcasting could be included as an alternate to detailed minutes and Councilmember Moylan stated that it could not and the option of Webcasting would not be a part of his motion.

Assistant City Manager Walker inquired if it would be sufficient for the detailed minutes be surrounding the recommendation and the reasons therefore, or would the minute detail have to include all of the discussions. Councilmember Moylan stated the detailed minutes need to include all of the discussions including who said what to whom.

VOTE: 5-2 (Councilmembers Lee and Whittum dissented)

MOTION: Vice Mayor Hamilton moved and Councilmember Moylan seconded that Council provide direction to staff that if new information comes up during a public hearing on a Council item, that Council has the ability to return the item back to the original board or commission for reconsideration.

Councilmember Howe offered a friendly amendment to add that the Council will send an item (containing new information) back to the board or commission by a vote of the Council. Vice Mayor Hamilton agreed.

Restated MOTION: Vice Mayor Hamilton moved and Councilmember Moylan seconded to offer clarification to staff that if new information comes up during a public hearing on a Council item which has already been heard by a board or commission, then Council has the ability to return the item back to the original board or commission for reconsideration by a vote of the Council.

VOTE: 7-0

MOTION: Vice Mayor Hamilton moved and Councilmember Moylan seconded to provide clarification to staff that a board or commission chair could appoint a designee individually per meeting or for a longer period of time.

Councilmember Moylan offered a friendly amendment that if the designee is not specifically identified, then it is assumed to be the vice chair. Vice Mayor Hamilton stated she does not want to write that as part of the policy but does want to provide the direction and let the boards and commissions decide for themselves. Vice Mayor Hamilton stated she would be happy to add that to her motion as a clarification. Councilmember Moylan agreed.

Restated MOTION: Vice Mayor Hamilton moved and Councilmember Moylan seconded to provide clarification to staff that a board or commission chair could appoint a designee individually per meeting or for a longer period of time. One additional point of clarification is that should a designee not be specified, the vice chair will be assumed to be the designee.

VOTE: 7-0

Councilmember Lee proposed that a Council discussion be added to an upcoming agenda which would address the addition of another excused absence (bringing the total limit for a personal leave absence to two) to the Council attendance policy. Assistant City Manager Walker stated that was acceptable if it is the will of Council. Councilmember Lee confirmed with Mayor Spitaleri that this item will be added to a future agenda. Mayor Spitaleri will work with the city manager to identify a date.

7. RTC 08–022 Acceptance of Annual Status Report on Receipt and Use of Development Impact Fees

Senior Management Analyst Pete Gonda presented the staff report.

Councilmember Lee left the dais.

Public hearing opened at 9:44 p.m.

No speakers.

Public hearing closed at 9:44 p.m.

Vice Mayor Hamilton inquired about the unspent money contained in the funds and Finance Director Mary Bradley explained that the nature of these funds is that they are designed to accumulate money for larger projects, particularly transportation and impact fees. Vice Mayor Hamilton asked for an example of a current project and Director Bradley explained that the Mary Avenue overpass project and the grade-way separations on Lawrence Expressway are examples of large projects where unspent money is accumulating for future work.

Councilmember Whittum inquired if he should recuse himself from voting on this item as one of the projects is within 500 feet of his home. City Attorney Kahn

stated he did not need to recuse himself.

MOTION: Councilmember Howe moved and Councilmember Moylan seconded to approve Alternative 1: Council accepts the FY 2006/2007 status report on the receipt and use of development impact fees.

VOTE: 6-0 (Councilmember Lee absent)

8. RTC 08-029 Positions on State and Local Ballot Measures for the February 2008 Election

Intergovernmental Relations Officer Yvette Agredano presented the staff report.

Vice Mayor Hamilton inquired about the “no recommended position” on Proposition 91 because Council previously recommended approval on another item that achieves the same thing.

Officer Agredano stated Proposition 91 was developed and circulated for signature at the same time that Proposition 1A was being negotiated. The League of California Cities agreed to promote 1A and not Proposition 91; however, the signatures had already been gathered and the proposition qualified for the ballot which could not be stopped. The City’s agreement with the League of California Cities was to support Proposition 1A and not support or promote Proposition 91.

Councilmember Lee returned to the dais.

Vice Mayor Hamilton inquired why staff is not recommending a “no” position on this proposition as the backers of the ballot are suggesting. Officer Agredano stated the merits of the proposition are still in line with City policy and staff felt it was better to not take any position.

Public hearing opened at 9:50 p.m.

No speakers.

Public hearing closed at 9:50 p.m.

MOTION: Vice Mayor Hamilton moved and Councilmember Lee seconded to approve Alternative 1 and 3:

Alternative 1: Council adopts the following positions on the ballot measures **with** a change to Proposition 91 to a “no” position.

State Ballot Measures:

- Proposition 91: **Oppose** Position
Transportation Funds. Initiative Constitutional Amendment
- Proposition 92: No Recommended Position, not City Business
Community Colleges. Funding. Governance. Fees. Initiative

- Constitutional Amendment and Statute
- Proposition 93: No Recommended Position, not City Business Limits on Legislators' Terms in Office. Initiative Constitutional Amendment
- Proposition 94: No Recommended Position, not City Business Referendum on Amendment to Indian Gaming Compact
- Proposition 95: No Recommended Position, not City Business Referendum on Amendment to Indian Gaming Compact
- Proposition 96: No Recommended Position, not City Business Referendum on Amendment to Indian Gaming Compact
- Proposition 97: No Recommended Position, not City Business Referendum on Amendment to Indian Gaming Compact

Alternative 3: Council permanently adopts the ballot measure pilot review process.

Councilmember Moylan stated the key thing is that Council should not take a position on anything that is not directly related to a policy already set up. Councilmember Moylan stated since Proposition 91 does not affect City policy, Council should not take any position on it.

Officer Agredano stated City policy supports transportation funding going to local governments and also supports protecting those revenues from the state taking the money out of the local government's general fund and putting it in the states general fund. There is City policy that would back a "support" position on the proposition; however, staff feels since the City was part of the negotiating team with the League of California Cities to support Proposition 1A, the City needs to live up to their negotiations and not support Proposition 91.

Councilmember Moylan stated there is an argument on both sides of Proposition 91 with regard to City policy which is why staff is recommending taking a "no position" on Proposition 91. Councilmember Moylan stated he would prefer to leave the motion as staff recommended, but nonetheless will still support the motion. Councilmember Moylan stated the key of the new process is to look critically at each item to see if it relates to what Council has previously decided and if it does not, the City should stay out of taking a position.

VOTE: 5-2 (Mayor Spitaleri and Councilmember Whittum dissented)

NON-AGENDA ITEMS & COMMENTS

COUNCIL: Councilmember Whittum stated he understands that Mayor Spitaleri and Vice Mayor Hamilton requested to meet with him in private and he wanted to know the subject of the meeting. Mayor Spitaleri stated it was not a private meeting and explained that he sent Councilmember Whittum an email which identified that the meeting would be about Council protocol. Councilmember Whittum asked Mayor Spitaleri to

elaborate regarding the agenda for that meeting and Mayor Spitaleri stated this was not the proper time for that discussion. Mayor Spitaleri explained that this section of the meeting was for Council comments. Councilmember Whittum stated he sees no harm in discussing the agenda. Mayor Spitaleri stated the agenda will be about Council protocol.

Councilmember Moylan inquired when the issues of public campaign financing and the replacement process for the city manager will be placed on the agenda

Mayor Spitaleri stated there will be a study session to discuss the replacement process for the City Manager which will be held on February 2, 2008 and a date has not been set for public campaign financing. City Manager Chan stated the next Council meeting will be February 12, 2008. According to Council direction, the next step would be to form a subcommittee or move this issue to the following meeting on February 26, 2008. Mayor Spitaleri stated he would like to place the formation of a public campaign financing subcommittee on the February 12, 2008 Council meeting agenda.

Councilmember Swegles announced that he went to a "future cities" presentation at Moffett Field which included 8th grade student projects. Councilmember Swegles cited examples of some of the student's presentations of future cities. Councilmember Swegles stated he was very impressed by the student inventions. Councilmember Swegles stated schools from Sunnyvale or San Jose were not represented in this contest and he is hopeful that next year, the City will have representation and he urged his colleagues to attend this event in 2009.

Councilmember Lee inquired if staff could provide written responses to the issues that the member of the public, Yong Ja Walterskirchen, brought up earlier during public comments. Councilmember Lee requested that Council be copied on the responses. Director of Community Development Hanson Hom stated staff has been meeting with Ms. Walterskirchen and staff can provide Council with a weekly update on this situation. Councilmember Lee stated that would be acceptable.

STAFF: None.

INFORMATION ONLY REPORTS/ITEMS

- Tentative Council Meeting Agenda Calendar
- RTC 08-033 Opportunity for Council to Appeal Decisions of the Planning Commission Meeting of January 14, 2008 and the Administrative Hearing of January 16, 2008

- RTC 08–027 Boards and Commissions Quarterly Attendance (Fall 2007) Information Only
- Draft Minutes of the Arts Commission Meeting of October 17, 2007
- Draft Minutes of the Housing and Human Services Commission Meeting of December 19, 2007
- Draft Minutes of the Board of Library Trustees Meeting of January 7, 2008
- Draft Minutes of the Heritage Preservation Commission Meeting of January 9, 2008
- RTC 08-016 Informational Report – Vacancy and Rent Survey

ADJOURNMENT

Mayor Spitaleri adjourned the Council meeting at 9:59 p.m. in honor of Genevieve Corboline.

Gail T. Borkowski
City Clerk

Date